



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 24, 2003

Mr. Lee Veness
Assistant County and District Attorney
Ellis County and District Attorney's Office
1201 North Hwy 77, Suite B
Waxahachie, Texas 75165-5140

OR2003-1977

Dear Mr. Veness:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178260.

Ellis County (the "county") received several requests from the same requestor for information relating to the proposed sale of certain county-owned land. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.110, 552.128, and 552.131 of the Government Code. Pursuant to section 552.305 of the Government Code, you notified the proposed buyer of the request, and that company has submitted comments to this office. We have considered all claimed exceptions and reviewed the submitted information.

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 protects a governmental body's planning and negotiating position with respect to particular transactions. *See* Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisal, and purchase price of property until the transaction is either completed or canceled. *See* Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and

negotiating position in regard to particular transactions.” See ORD 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good faith determination in this regard, unless the contrary is clearly shown as a matter of law. See ORD 564.

You state that the county is attempting to sell certain property but the sale has not yet been approved and no contract has been signed. You also indicate that the county has determined that the release of the requested information would detrimentally affect its negotiation position with respect to this sale. Based on your representations and our review of the submitted information, we believe that you have demonstrated that section 552.105 protects this information, and it may be withheld pursuant to this exception. As our ruling on this issue is conclusive, we need not address your other arguments or the arguments submitted by the proposed buyer.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

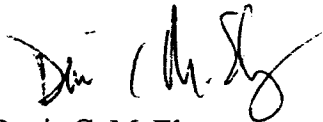
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 178260

Enc. Submitted documents

c: Mr. James S. Borders
2117 Gibson Road
Waxahachie, Texas 75165
(w/o enclosures)

Mr. Ted R. Ezzell, Jr.
TREE Development Company, L.L.C.
1501 West Randol Mill Road
Arlington, Texas 76012
(w/o enclosures)